COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING

{Chapter VIII, Rule 32(2)(b)}

Description of the Case.

Criminal Appeal No. 1092 of 2001
(Old No. 1566 of 1984)

State of U.P. (now Uttarakhand) **.....Appellant**

Versus

Ramesh Chandra Pant s/o Bhuwan Chandar,
R/o Village Khunrakot, P.O. Baey,
District Almora.

.... Respondent

Sri Amit Bhatt, Addl. Govt. Advocate for the State.
Sri T.S. Rautela, Advocate for the respondent.

~~Approved for reporting~~.
Not approved for reporting.

Date: April 24, 2007

(Dharam Veer, J.)

Reserved

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Government Appeal No. 1092 of 2001
(Old Government Appeal No. 1566 of 1984)

State of U.P. (now Uttarakhand) …… Appellant

Versus

Ramesh Chandra Pant s/o Bhuwan Chandar,
R/o Village Khunrakot, P.O. Baey,
District Almora. …… Respondent

……

Sri Amit Bhatt, Addl. Govt. Advocate, for the State.
Sri T.S. Rautela, Advocate for the respondent.

……

Hon. Dharam Veer, J.

The present Government appeal has been filed against the judgment and order dated 28.02.1984 passed by the Munsif-Magistrate, Pithoragarh in Criminal Case No. 112 of 1983 acquitting the respondent U/Ss 468 and 409 I.P.C.

2. The facts of the case are that an F.I.R. was lodged against the respondent for committing the offences punishable U/s 468 I.P.C. for committing forgery for purpose of cheating and U/s 409 I.P.C. for committing criminal breach of trust by a public servant by misappropriating a sum of Rs. 61,377.19. Accordingly, the accused was summoned in the Court.

3. On 28.11.1977, the Chief Judicial Magistrate, Pithoragarh, framed charges against him U/Ss 409, 468 and 477A I.P.C. and posted the matter for prosecution evidence on 04.02.1978, when the Presiding Officer was on leave and the case was fixed on 18.03.1978 for recording evidence. But, on 13.03.1978, the case was transferred from the Court of C.J.M. to the Court of Munsif-Magistrate, Pithoragarh for disposal. On 11.04.1978, the case

was received in the Court of Munsif-Magistrate, Pithoragarh and the case was adjourned to 19.04.1978, when it was fixed for 12.05.1978. On 20.04.1978, the learned Presiding Officer of the Court recorded that since he did not have the criminal powers, therefore, the case be posted after 35 days. On 12.05.1978, the case was posted for 21.06.1978 for prosecution evidence. On 21.06.1978, none appeared on behalf of the state and no witness from the side of the prosecution was present in the Court. Therefore, the case was adjourned to 19.07.1978, when the case could not be taken up on account of the transfer of the Presiding Officer. The case was then adjourned to 29.08.1978, when an order was passed to summon the serial no. 1 to 4 of 11 Kha for evidence on 21.09.1978. On 21.09.1978 also, the prosecution could not bring any witness for evidence and time was sought to summon the Sub-Inspector who was transferred out of the district. Therefore, 07.11.1978 was fixed. On 07.11.1978, the Presiding Officer was on leave and the case was adjourned to 12.12.1978. Then again, the case was adjourned on 12.12.1978, 05.01.1979, 06.02.1079, 16.03.1979, 24.03.1979, 24.04.1979 and 08.05.1979. On 08.05.1979, the accused was absent. Therefore, order for issuance of non-bailable warrant against him was passed and the case was adjourned to 04.06.1979. After passing of the order of the issuance of non-bailable warrant, the application for recall of the order was passed and the order for issuance of non-bailable warrant was recalled. On 04.06.1979, the case was fixed for 20.06.1979 for framing the charge, when no one appeared in the Court and the case was again adjourned to 12.07.1979. On 12.07.1979, the case was again adjourned on account of leave of the Presiding Officer and the case was adjourned to 06.08.1979 for reconstruction of the charge. On 06.08.1979, it was ordered that since the amount was heavy, the case would be committed to the court of Sessions. The accused was directed to appear on 20.08.1979. On 20.08.1979, the Judicial Magistrate, Pithoragarh, ordered that the amount alleged to have been embezzled is a big one. Hence, let the accused be committed to Court of Sessions. He was directed to remain on bail on the previous bail bonds. He also ordered for preparation of the calendar and accused was directed to appear before the Sessions Court, Almora. Accordingly, on 20.08.1979, the case was committed to the Court of

Sessions for trial U/Ss 409 and 468 I.P.C. vide letter by the Munsif Magistrate, Pithoragarh to Sessions Judge, Almora and calendar dated 27.08.1979 (paper no. 29 Ka/1 & 29 Ka/2) was prepared.

4. However, after creation of separate Judgeship of Pithoragarh, vide order dated 28.02.1981, the learned Sessions Judge, Pithoragarh transferred back the case to Chief Judicial Magistrate, Pithoragarh u/s 228 Cr.P.C. for being tried by him keeping in view the observations of the learned Sessions Judge in the said order. Thereafter, on 10.03.1981, the case was transferred to the Chief Judicial Magistrate, Pithoragarh and the case was adjourned to 18.04.1981. On 18.04.1981, the case was adjourned to 28.05.1981 for recording the prosecution evidence. The case was again adjourned to 6.7.1981, 14.8.1981, 4.9.1981 and 13.10.1981. On 13.10.1981, 10.11.1981 was fixed for prosecution evidence, when again the case was adjourned to 07.12.1981. Thereafter, from 07.12.1981 to 13.1.1983 the case was adjourned on different dates on one ground or other.

5. On 18.01.1983, the case was transferred by the Sessions Judge, Pithoragarh to Munsif-Magistrate, Pithoragarh. From 18.01.1983 to 27.2.1984 the case was adjourned on some pretext or the other and no witness was produced in Court for examination. Therefore, the evidence was closed on 27.02.1984 & the statement of the accused under Section 313 Cr.P.C. were recorded and the case was posted for arguments on 28.02.1984 when none appeared from the side of the State. Therefore, Munsif Magistrate, Pithoragarh, after hearing the counsel for the defence, acquitted the accused of the charges levelled against him on the ground that for seven long years the prosecution has failed to produce any witness and there was nothing on record to prove that the accused has committed the offence punishable U/Ss 468 and 409 I.P.C.

6. Feeling aggrieved of the findings of the Court below, the Government has preferred this appeal. Leave to appeal was granted to the State vide order dated 14.03.1985.

7. Sri Amit Bhatt, the learned Government Advocate for the appellant submitted that the judgment and order under appeal are bad in law and are liable to be set aside.

8. Sri T.S. Rautela, the learned counsel for the respondent supported the judgment and order under appeal and submitted that the Government Appeal is liable to be dismissed.

9. I have heard the learned Addl. Government Advocate for the appellant State and Sri T.S. Rautela, the learned counsel for the respondent. I have also perused the entire records of the case.

10. Having considered all the facts and circumstances of the case and going through the materials placed on record, I am of the view that when the prosecution failed to examine prosecution witnesses for seven years in spite of several adjournments to facilitate the State to examine the witnesses, the trial Court was left with no other option but to close the prosecution evidence and record statement of the accused under Section 313 Cr.P.C. I find no illegality, irregularity or impropriety in the order under appeal and the findings of the learned trial Court are perfectly justified and the impugned judgment and order under appeal are liable to be affirmed.

11. In this view of the matter, the Government Appeal is dismissed and the judgment and order under appeal are hereby affirmed.

(Dharam Veer, J.)

Dated: April 24,2007
A